

A.E.R.

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(24)

HIGH COURT OF CHHATTISGARH : BILASPUR
(Division Bench)

CORAM: Hon'ble Shri Vijay Kumar Shrivastava, J. &
Hon'ble Shri-Dhirendra Mishra, J.

CRIMINAL APPEAL NO.221 OF 1999

Appellant:

Sampatlal
S/o Kodulal Mahobia
Aged about 38 years
R/o Pahruba (Tola), Mer
PS: Dheemarkheda
Dist: Jabalpur
Labourer, Telephone Department
Bilgahna, PS Kota, Bilaspur

Vs

Respondent:

The State of Madhya Pradesh
Now Chhattisgarh

PRESENT:

Shri JD Bajpai, counsel for the appellant.
Shri UNS Deo, Additional Public Prosecutor with Shri Akhil
Mishra, Panel lawyer for the State.

J U D G M E N T
(dated 15th June 2006)

Per Hon'ble Shri VK Shrivastava, J.

This appeal under Section 374 (2) of the Cr.P.C. has been directed against the judgment of conviction and order of sentence dated 14.01.1999 passed by the Special Judge (Atrocities) Bilaspur in Sessions trial No.61/1997 whereby the appellant was convicted for committing murder of his wife Smt.Sunita @ Kuntibai, punishable under Section 302 IPC and was sentenced to imprisonment for life.

2) Admittedly, deceased Sunita @ Kuntibai was the second wife of the appellant. He along with his wife was living in a rented house of Phoolbai. On the date of incident, both husband and wife were slept in their room.

3) Prosecution case in brief is that in the intervening night of 7th and 8th of August 1996, at about 11 pm, appellant pouring kerosene oil on his wife Sunita @ Kuntibai, set her ablazed and thereafter fled away from the spot. Sunita @ Kuntibai in burning condition, up-roared and rushed outside the room. Witness Phoolbai tried to extinguish the fire with the help of a blanket. Sunita @ Kuntibai was taken to the hospital. An intimation report of burn case from Primary Health Center Belgahana was sent to Police. The police made entry of the same in Roz-namcha sanha and thereafter Head Constable Dayaram Sharma went to the hospital to enquire the case. He got the statement of injured recorded by Medical Officer Dr (Ms) AN Khalkho. From her statement, it was revealed that she was set ablazed by her husband Sampat; therefore, a case under Section 307 of the IPC was registered and investigation was started.

4) During investigation, bangles, jaricane containing some kerosene oil, match stick used for lighting and other materials found on the spot were recovered and collected; map was prepared. The statement of Sunita @ Kuntibai was also got recorded by the Executive Magistrate DR Khunte. Sunita @ Kuntibai, who was admitted in the hospital for treatment died as a result of those burn

injuries; therefore, the offence was converted from 307 to 302 of the IPC. Sub-Inspector of Police after conducting inquest prepared inquest report and sent the body for postmortem. Dr (Mrs) M Sen and Dr S Mukherjee conducted the autopsy and they opined that the death was caused due to shock as a result of extensive burn injuries that of 90%. Statements of witnesses were recorded, even under Section 164 of the Cr.P.C., Phoolbai and Baburam @ Babua were examined and their statements were recorded by the Chief Judicial Magistrate. After completion of the investigation, challan was filed in the Court of Additional Chief Magistrate, Bilaspur, who committed the case to the Court of Sessions for trial.

5) Charge under Section 302 of the IPC was framed against the appellant, and the same was read over and explained to him, who abjured the guilt. His defence is that he is innocent; he was not visiting deceased Sunita @ Kuntibai regularly, therefore, she immolated herself.

6) Learned trial Court relying on both the dying declarations recorded by Medical Officer Dr (Ms) AN Khalkho (PW/5) and Executive Magistrate DR Khunte (PW/4) and also considering the circumstances that the appellant instead of getting his wife treated properly, fled away from the spot, held the appellant guilty for committing offence of murder of his own wife Sunita @ Kuntibai under Section 302 of the IPC and was accordinally sentenced.

7) Learned counsel for the appellant contended that dying declaration (Ex.P/13) recorded by Medical Officer Dr (Ms) AN Khalkho (PW/5) does not bear the signature or finger impression of the deceased and also the same was not introduced along with the challan, but was subsequently filed in the Court, therefore, it can not be relied upon beyond doubt. Another dying declaration i.e. Ex.P/8 recorded by the Executive Magistrate that also does not inspire confidence because, at that time, deceased Sunita @ Kuntibai was in a condition of 90% burns. As also when earlier, already a dying declaration was recorded, there was no necessity of recording another dying declaration. Learned counsel for the State opposed these contentions and supported the judgment of conviction and order of sentence passed by the trial Court.

8) It is not disputed that Sunita @ Kuntibai was burnt and was died due to shock as a result of burn injuries. Even otherwise, medical evidence of Dr (Ms) AN Khalkho (PW/5), who on the first hand examined Sunita @ Kuntibai in burn condition and evidence of Dr S Mukherjee (PW/10), who conducted autopsy have been adduced by the prosecution and by their evidence, medical examination report (Ex.P/9-A), and autopsy report (Ex.P/17) have been proved. Dr (Ms) AN Khalkho (PW/5) in her evidence deposed that Sunita @ Kuntibai was brought in burn condition for examination on 08.08.1996 at 3.30am, she examined her and found that the extent of burns is 67%, depth of burn (a) Dorsun of hand up to wrist joint, (b) left side of left

arm up to shoulder joint 10" x 2", (c) Middle of left forearm 4" x 1", having white skin and on other sites red, black color blister skin caused by burn was found. Dr S Mukherjee (PW/10) in his statement deposed that on examination of dead body of the deceased, it was found that 1st and 2nd degree burns over face, neck, chest, abdomen, both thighs, both upper and lower limbs were present and total burns were found to be 90%. She died as a result of shock due to extensive burns of 90%. From the aforesaid evidence and reports (Ex.P/9-A and Ex.P/17), it is established that Sunita @ Kuntibai received burn injuries and as a result of those injuries, she died.

9) Phoolbai (PW/1), Baburam @ Babua (PW/2), who were present in their house and in whose house appellant and deceased were living on rent have been produced for evidence. They, in their police statement have stated that they were informed by Sunita @ Kuntibai that the appellant after pouring kerosene set her on fire. Both these witnesses have been examined under Section 164 of the Cr.P.C. by the CJM. Before CJM also they deposed against the appellant; but during the trial both these witnesses turned hostile and they resiled from their earlier versions.

10) The 1st dying declaration is Ex.P/13 recorded by Dr (Ms) AN Khalkho (PW/5) was not filed along with the challan; but when witness Head Constable Dayaram Sharma was examined on 29.05.1998 by the trial Court, the fact of dying declaration recorded by Dr.(Ms)AN Khalkho (PW/5) was noticed by the Court, therefore, at

the instance of court, the dying declaration was taken out from the police case diary and was made a part of the challan. A copy of the same was also given to the appellant. Dr (Ms) AN Khalkho (PW/5) in her statement categorically stated that she recorded dying declaration of the deceased Sunita @ Kuntibai in the early morning at 6.45 am in presence of dresser KD Dahariya and compounder SK Lal. At that time, she was fit to make a statement. In that statement, deceased Sunita @ Kuntibai stated that in the mid-night, at about 11 pm, the appellant poured kerosene oil on her and set her ablaze. Dr (Ms) AN Khalkho (PW/5) proved the dying declaration Ex.P/13. She did not take the signature or finger impression of the deceased Sunita @ Kuntibai in Ex.P/13. She was cross examined at length but no question was asked regarding not taking signature or finger impression of the deceased on Ex.P/13. That apart, only in absence of signature of the deceased, the dying declaration recorded by the Medical Officer who has no animosity with the appellant or any interest in the deceased can not be discarded. Nothing in her cross examination has been elicited so as to dis-believe her version.

11) On the same day, DR Khunte, Executive Magistrate (PW/4), also recorded statement of Sunita @ Kuntibai and proved the same to be Ex.P/8. DR Khunte (PW/4) categorically stated on his examination that Sunita @ Kuntibai stated that appellant poured kerosene on her and set her ablaze. In his cross examination, he denied the suggestion that Sunita @ Kuntibai was not in a condition to

make statement. He also gave explanation regarding not availability of Medical Officer at the time of recording the said statement. In his cross examination, nothing has been elicited so as to dis-believe his version. That apart, the said dying declaration second in number does not make it in admissible.

12) Dying declaration Ex.P/13 and Ex.P/8 duly proved were acceptable and the trial Court, also assigning various reasons accepted both the dying declarations to rely to hold the appellant guilty. Both the declarations are not contradictory and they corroborate each other; they are corroborated by medical evidence and also by the circumstantial evidence that of the conduct of appellant.

13) From the evidence, it is also established that although both husband and wife i.e. appellant and deceased were in a room and in that room deceased Sunita @ Kuntibai was set ablaze. But the appellant, leaving her behind in burning condition, left the spot. Neither the appellant took care to get her treated nor reported the matter to the Police. Although appellant claims that he tried to extinguish the fire and also suffered burn injuries on his both hands, but neither there is any report nor any substantial evidence to substantiate the same. Therefore, conduct of the appellant also suggests his involvement in the crime.

14) We are of the considered view that learned trial Court relying upon both the dying declarations, medical evidence and conduct of the appellant, correctly held the appellant guilty for committing

the offence of murder of his wife Smt Sunita @ Kuntibai and has correctly convicted and sentenced the appellant.

15) Before parting with the case, it is necessary to mention that a hostile tendency is developing in witnesses, to resile from their previous statements, whether made before the Police or Magistrate in order to save the culprits. Leaving aside some exceptions learned lower Courts never thought it proper to curb such tendencies by exercising their powers as envisaged under Section 344 of the Cr.P.C. Here, in the instant case it was proved that Phoolbai (PW/1) and Baburam @ Babua (PW/2) were present and they gave statement before the Police and even before the CJM; but in order to save the culprit, they, on flimsy grounds resiled from their earlier statement. From evidence on record and circumstances also, it is clear that both these witnesses instead of revealing the truth before the trial Court, have stated lie. In future if such cases come to the notice of concerned Courts, they must take care of provision contained in the Section 344 of the Cr.P.C; and should take necessary steps against those who attempts to frustrate the sanctity of judicial system.

16) The appeal fails; judgment of conviction and order of sentence passed by the trial Court is confirmed.

Sd/-
V.K.Shrivastava
Judge

Sd/-
Dhirendra Mishra
Judge